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The Draft Age Appropriate Design Code for Online Services

The Motion Picture Association (MPA) welcomes this opportunity to contribute to the consultation on the Information Commissioner's draft code of practice on Age Appropriate Design ("the Code").

MPA member companies (Sony Pictures, NBCUniversal, Viacom, Netflix, Disney and WarnerMedia) have a long-standing interest in regulatory developments affecting screen sector businesses and welcome the ICO's leadership in seeking to ensure that online services appropriately safeguard children's personal data.

We share the goal of promoting practices that will help enable children to engage with online content in a safe environment.

While we share the aims of the code, we are concerned that, as currently drafted, it will not achieve its stated objectives and risks having an adverse effect not just on organisations providing digital services online, but on their users and also the children that the Code seeks to protect.

Therefore, before progressing further with the Code, the MPA urges the ICO to undertake a comprehensive impact assessment to assess the potential costs and benefits associated with the introduction of the Code. The MPA will be happy to provide evidence to help facilitate such an assessment.

Scope

The scope of the Code as currently drafted is extremely broad covering all Information Society Services (ISS) *"likely to be accessed by children"*.

This potentially includes online streaming services, such as those provided by our members, though it excludes their broadcast services. Currently, On Demand Programming Services are regulated in accordance with European and domestic law, overseen in the UK by Ofcom. It is unclear to MPA members why the ICO would seek to intervene in an area of regulation already provided for in statute and within the remit of an existing regulatory body.

Extending the restrictions to all services that are *"likely to be accessed by children"* risks putting significant practical constraints and additional costs on sites and services that are not offered to or intended for children, but which children could potentially access.

The ICO itself cautions against a regulatory approach that could lead to a situation where, *"the only choice in practice is to avoid online services altogether, which means the child loses the benefits of online play, interaction and development"*[1]. We fear that the Code as currently constituted runs this risk.

[1] https://ico.org.uk/media/about-the-ico/consultations/2614762/age-appropriate-design-code-for-public-consultation.pdf, p6

Default to age appropriate content

Forcing every ISS to default to a child appropriate setting for non-age verified users would impose disproportionate costs and damage the frictionless experience users enjoy when accessing online video streaming services, including those provided by our members.

This would be a damaging, and also unnecessary, consequence of implementation of the Code as currently drafted. Many audio-visual services already operate within a highly-respected statutory regime, which provides protections for both child and adult users, without requiring the services to default to a child appropriate setting.

In addition, many services already have in place further, voluntary, child-protection measures to ensure that the service is a trusted space. These include, for example, various types of content labelling and parental control systems.

Disproportionate data collection

The Code places significant emphasis on the use of robust age verification systems. In particular, Standard 2 requires that all 16 Standards are applied to all users by default unless such age-verification processes are in place.

The consultation is clear that to be "robust", age verification methods require collecting personal information from a user (such as a payment card) to confirm they are adults, or using a third-party verification service to ensure children cannot circumvent age restrictions.

This would have the perverse outcome of requiring significantly more data collection of both adults and children, in direct contradiction to the principle of data minimisation.

In our view, it would be excessive to require services to collect additional data in order to establish age on already regulated video streaming services that currently collect limited personal information and use it only for legitimate interest purposes – such as serving more tailored content recommendations to viewers.

Added to this, the proposal that age information should be gathered to provide multiple experiences for different aged children will simply add further to the data demands made of our service users.

Overall, we are concerned that increasing the amount of data collection in this way runs contrary to the spirit of the GDPR and could create new security vulnerabilities due to the wide range of online services that will be required to collect this highly personal and sensitive data.

Consultation and implementation timeframe

Alongside many others in the screen sector and beyond, we are concerned about the wide-ranging effects of the change in approach to regulation implied by the adoption of the Code as it stands.

A six-week consultation is simply too short to consider all the substantial changes this would potentially require. The Government's consultation principles, which give clear guidance to government departments on conducting consultations, advise as follows: *"Judge the length of the consultation on the basis of legal advice and taking into account the nature and impact of the*

proposal. Consulting for too long will unnecessarily delay policy development. Consulting too quickly will not give enough time for consideration and will reduce the quality of responses."[2]

In addition, given the significant impact the Code will have on the various services offered by MPA members (including: digital and online TV, feature film, news and games offerings) - not only in the UK, but globally - a twelve-month implementation period is unrealistic.

This is especially true considering the technology solutions and system changes that will need to be developed and implemented across multiple platforms, as well as the deployment of resources to implement what would be significant changes to user interaction with these services.

The MPA believes more time should be allowed to consult and reconfigure the Code so that it can meet its objectives without risking the adverse and damaging outcomes we currently envisage.

Conclusion

MPA member companies are highly active in helping create a safe and secure environment for children to enjoy their content online. Having considered the proposals set out in the draft Code carefully, we do not believe that they achieve the stated ambition to protect children.

Instead we believe they will create a new set of risks and vulnerabilities. We stand ready to provide assistance in revising the proposed text of the Code so that it achieves its objectives while maintaining the myriad of benefits that online services give to children.

For further information please contact Nigel Warner [redacted] or Caroline D'Silva [redacted]

[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf